

1 CRIMINAL DISTRICT COURT
2 FOR THE PARISH OF ORLEANS
3 STATE OF LOUISIANA
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7 STATE OF LOUISIANA

CASE NO.529-104

8 VERSUS

9 MATTHEW SIMMS

SECTION "A"

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11
12 DRUG TEST
13

14 JULY 15, 2015
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16 HON. LAURIE A. WHITE, JUDGE PRESIDING
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21 APPEARANCES:

22 ZACHARY POPOVICH

ASSISTANT DISTRICT ATTORNEY

23 ARTHUR ROWE

REPRESENTING THE DEFENDANT
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1 MR. POPOVICH:

2 Is that Mr. Simms?

3 THE COURT:

4 Yes, Mr. Simms.

5 MR. POPOVICH:

6 Okay, Your Honor, we're on page five,
7 529-104.

8 THE COURT:

9 All right, Mr. Paul Ube -- sit down, sir,
10 next to your client, your lawyer.

11 MR. ROWE:

12 Your Honor, if I could just make the Record
13 clear. Arthur Rowe standing in on behalf of Mr. Billot
14 for the purposes of this hearing only.

15 THE COURT:

16 Okay, I'm just trying to determine the issue
17 from his drug screen.

18 MR. ROWE:

19 I understand that.

20 PAUL UBE, called as a witness, after having first been
21 duly sworn, did testify as follows:

22 -DIRECT EXAMINATION-

23 BY THE COURT:

24 Q. Mr. Ube, you've been sworn in. Tell us where you
25 work.

26 A. I do the drug lab work for Criminal Court New
27 Orleans.

28 Q. All right, what did we find on Mr. Simms? He's
29 been drug screened twice today through your analysis?

30 A. Yes, three times today.

31 Q. Three times? Okay, tell me what you found.

32 A. Okay, at 9:49 a.m. this morning Mr. Simms came into

1 the lab, and we tested him for the regular panel which
2 is amphetamines, benzos, cocaine, ethanol, opiates, and
3 cannabinoids which is marijuana. At that time, at 9:49,
4 his test came back positive for cocaine. The reading
5 was 398, and the cut off is 150.

6 Q. And what you mean by cut off is it's positive of
7 anything over 150?

8 A. Yes.

9 Q. Okay, at 10:57 a.m. we had a rerun on it. Anybody
10 that comes into the lab, and test positive for any drug,
11 any major drugs, we have to rerun it. The Supreme Court
12 says that we have to give them the benefit of the doubt
13 and have the same sample reran.

14 Q. And that was the same sample that he gave at 9:49?

15 A. Yes, Your Honor.

16 Q. Okay.

17 A. I reran the test again at 10:57 a.m. At that time
18 Mr. Simms came up positive for amphetamine, and his
19 reading was 4,659. The cut off is 1,000 on that. And
20 his cocaine level dropped all the way down to 69 which
21 is highly unusual. I retested the sample again.

22 Q. The same sample?

23 A. To verify or find out why, try to find out why his
24 cocaine level dropped so much which is very, very
25 unusual, and his amphetamine level was up. At 11:14
26 a.m. I ran another test on Mr. Simms. His amphetamine
27 level was just about the same. It came up 4,874, and
28 the cut off is 1,000. And his cocaine level went from
29 69 to 81. It still did not reach its first reading
30 which was --

31 Q. Three ninety-eight.

32 A. Three hundred and ninety-six.

1 Q. Ninety-six or ninety-eight?

2 A. What I was trying to determine, Your Honor, was why
3 his cocaine level came up that high on the first test,
4 and so low on the second two tests. He still had
5 cocaine in his system, a very small amount, on the last
6 two tests. But the first test was extremely high.

7 Q. Well, why wouldn't the first test show the
8 amphetamine? You think he took amphetamines from 9:49?

9 A. Okay, and that's also why I ran the last two test
10 to find out and verify the amphetamine. The amphetamine
11 are just about consistent. I don't know what type of
12 medication he's taking if it's legal or illegal, but
13 amphetamine would have to come from a prescription drug
14 to be that high.

15 Q. Uh-huh. Well, why wouldn't it have shown up at
16 9:49?

17 A. As far as the cocaine is concerned, Your Honor?

18 Q. No, the amphetamine doesn't show up at 9:49.

19 A. No, the amphetamine is -- I don't know if he's
20 taking any medication, so.

21 Q. So you think he might have taken the medication, it
22 didn't show up in the first test, and then shows up in
23 the second and third?

24 A. Right, right.

25 Q. Okay. All right, amphetamine ever show up as
26 cocaine?

27 A. No.

28 Q. Cocaine doesn't show up as amphetamine?

29 A. Cocaine is the only thing that -- it's one of the
30 few drugs, that's cocaine is cocaine. It may be used in
31 different forms, but cocaine is going to come out as
32 cocaine only.

1 Q. Okay. All right, thank you so much.

2 THE COURT:

3 Do you have any questions?

4 MR. ROWE:

5 Yes. I'm sorry, doctor, or sir --

6 THE COURT:

7 Lab technician.

8 MR. ROWE:

9 Lab technician, sorry.

10 -CROSS-EXAMINATION-

11 BY MR. ROWE:

12 Q. Sir, what medications are you aware of that would
13 cause a positive reading for amphetamines? What class
14 of medications? I know something like Adderall would,
15 but what else?

16 A. That would be included with the amphetamine;
17 however, the level is pretty high. I don't know what
18 type of medication he is taking that's prescribed, if it
19 is prescribed. Is he taking any type of medication?

20 Q. I believe he's on sinus medication.

21 A. Sinus medication?

22 Q. Yeah, sinus medication.

23 A. No, sir.

24 Q. So that wouldn't explain a positive reading for
25 amphetamines?

26 A. No, there's no sinus medication that would come up
27 that high for amphetamine.

28 Q. What sort of, what sort of medication or what would
29 prompt such a drastic and expedient rise of the
30 amphetamine from the first test to the second test?

31 A. On the amphetamines?

32 Q. Cause it was the same urine, right?

1 A. The amphetamines? At 10:57 a.m. amphetamines
2 reading was 4,659. At 11:14 a.m. it was 4,874 which is
3 just about the same.

4 Q. Right.

5 A. If fluctuates depending upon the body chemistry,
6 that's normal.

7 Q. If I may, if I could direct you to test one, and I
8 don't have the sheet in front of me. What was the
9 amphetamine level on test one?

10 A. On the first test?

11 Q. Yes, sir.

12 A. Okay, let's see. The amphetamine level on the
13 first test was 29.

14 Q. Okay.

15 A. That was at 9:49 a.m.

16 Q. And, again, the test at 10:57, that was the second
17 test, that involved the same urine?

18 A. It came from the same sample.

19 THE COURT:

20 That means the same urine.

21 THE WITNESS:

22 Yes.

23 MR. ROWE:

24 It wasn't a second? Okay.

25 THE COURT:

26 So it can increase in the urine all by itself
27 outside of your body?

28 THE WITNESS:

29 Yes.

30 BY MR. ROWE:

31 Q. And, again, you said this was extremely unusual.
32 This series of events, right?

1 A. No, we are talking about the cocaine. The cocaine
2 is the one that I was concerned about at first; however,
3 after running him and found that he had this much
4 amphetamine in his system I ran his sample again.

5 THE COURT:

6 So he's - excuse me, I didn't mean to
7 interrupt you.

8 THE WITNESS:

9 No, that's okay.

10 THE COURT:

11 He went back down to take another test. Did
12 you test a second sample from him?

13 THE WITNESS:

14 Yes.

15 THE COURT:

16 I thought all three of these was the same
17 urine.

18 THE WITNESS:

19 Not from the first. The second two are the
20 same, from the same urine.

21 THE COURT:

22 Okay, so the first one was one sample.

23 THE WITNESS:

24 Right.

25 THE COURT:

26 And the second two was another sample?

27 THE WITNESS:

28 Yes.

29 THE COURT:

30 That makes sense.

31 MR. ROWE:

32 Q. Are the levels that you observed in that sort of

1 timeframe consistent with taking amphetamines
2 essentially immediately? I'm sorry, I'm just trying to
3 figure out -- that seems like a huge rise to go from -

4 THE COURT:

5 Well, it probably wasn't his urine the first
6 time. That's the point. The first urine he used had
7 cocaine; the second urine is his urine and it's
8 amphetamines.

9 Okay, anything else?

10 BY MR. ROWE:

11 Q. Doctor, how many other tests have you conducted
12 today with these machines?

13 A. I'm sorry?

14 THE COURT:

15 How many other tests today? How many tests
16 today have you all done down there?

17 THE WITNESS:

18 How many tests did I run?

19 THE COURT:

20 Yeah, today.

21 THE WITNESS:

22 On him?

23 THE COURT:

24 No, I think he means --

25 THE WITNESS:

26 In general?

27 MR. ROWE:

28 In general.

29 THE WITNESS:

30 Today? The entire morning?

31 MR. ROWE:

32 Yes.

1 THE COURT:

2 A lot.

3 MR. ROWE:

4 A lot?

5 THE WITNESS:

6 How about two hundred.

7 BY MR. ROWE:

8 Q. Okay, and have you seen inflated amphetamine
9 readings in any other test that would be inconsistent?

10 A. Look, let me explain to you what takes place, okay?
11 In the morning at six a.m. when I get in the drug lab,
12 that analyzer is calibrated on a daily basis, every day.
13 Periodically it's checked for the calibrators and the
14 control to make sure that everything is in sync, and
15 that is being done. That's the law that we have to
16 follow, okay. And prior to coming here, I checked the
17 calibrators and the control and it's consistent all
18 morning. There was nothing wrong with the analyzer.

19 Q. I'm sorry. During these drug test is somebody
20 observing them urinate?

21 A. What?

22 THE COURT:

23 Say it again so he can hear you. Did
24 somebody watch him urinate?

25 MR. ROWE:

26 Yes.

27 THE WITNESS:

28 Did somebody do what?

29 THE COURT:

30 Say it again, please.

31 BY MR. ROWE:

32 Q. Did someone watch him urinate into the cups?

1 A. That's the procedure that we have to follow. When
2 Mr. Simms come in, or anyone comes in for a drug test,
3 they are checked in at the main desk. After leaving the
4 main desk they are given a sample cup. They take that
5 sample cup which is sealed. Take it to the back. Give
6 a sample of urine, male or female, with a monitor, male
7 or female. They are monitored. After they are
8 monitored, that very same sample is handed to the
9 technician. We in turn place it in the analyzer. The
10 chain of command is the person that observed him taking
11 the test, or her, to the lab technician to the analyzer.
12 And everything is done that way.

13 Q. And as far as you know in this particular, Mr.
14 Simms' case, proper procedure was followed on both
15 testing occasions, correct?

16 A. That was his test and his test only.

17 Q. Okay, and that applies to the first and second
18 test?

19 A. The same way. Everything is done the same.

20 MR. ROWE:

21 All right. Thank you, Your Honor. I have no
22 further questions.

23 THE COURT:

24 Thank you. Thank you, Mr. Ube. I appreciate
25 it.

26 THE WITNESS:

27 Thank you very much.

28 THE COURT:

29 All right. Do you have a prescription for
30 amphetamines?

31 MR. SIMMS:

32 I have a -- I went to Wal-Mart and bought --

1 THE COURT:

2 Just an amphetamine I'm asking.

3 MR. SIMMS:

4 Suda, Sudafex? It's a nasal spray.

5 THE COURT:

6 Do you have a --

7 MR. SIMMS:

8 I had to give my I. D.

9 THE COURT:

10 Sir, I know your numbers are really high.

11 Just listen to my question. Do you have a prescription
12 for amphetamines?

13 MR. SIMMS:

14 I bought it over the counter, ma'am. No, I
15 don't. No, ma'am, I don't.

16 THE COURT:

17 You don't have a prescription for
18 amphetamines?

19 MR. SIMMS:

20 No, ma'am.

21 THE COURT:

22 Okay, all right.

23 MR. ROWE:

24 Your Honor, I have brief argument, if I may.
25 Your Honor, again this is --

26 THE COURT:

27 You can come back on Monday for a drug
28 screen.

29 MR. ROWE:

30 That's what I would ask, Your Honor. Thank
31 you.

32 THE COURT:

1 You might want to bring your nasal spray with
2 you.

3 MR. SIMMS:

4 I will bring that for you, ma'am. I give you
5 my word.

6 THE COURT:

7 Okay. What else are we scheduled for with
8 him today.

9 MR. POPOVICH:

10 We already have a new date, August 5.

11 THE COURT:

12 We don't have a new date?

13 MR. POPOVICH:

14 We do, August 5.

15 THE COURT:

16 Okay.

17 MR. SIMMS:

18 Can I say something else, Your Honor?

19 THE COURT:

20 No, please don't say anything else. I may
21 change my mind.

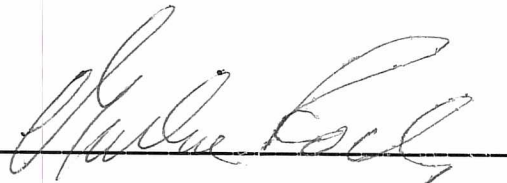
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Official Court Reporter

Criminal District Court

Section "A"